



University of Warwick institutional repository: <http://go.warwick.ac.uk/wrap>

This paper is made available online in accordance with publisher policies. Please scroll down to view the document itself. Please refer to the repository record for this item and our policy information available from the repository home page for further information.

To see the final version of this paper please visit the publisher's website. Access to the published version may require a subscription.

Author(s): Rebecca Probert

Article Title: Review of Women, family and gender in Islamic law, by Tucker, J. E.

Year of publication: 2011

Link to published article:

<http://dx.doi.org/10.1017/S0956618X10000918>

Publisher statement: Probert, R. (2011). Review of Women, family and gender in Islamic law, by Tucker, J. E. Ecclesiastical Law Journal, 13(1), pp. 102-103. © Ecclesiastical Law Society 2011.

BOOK REVIEWS

Women, Family and Gender in Islamic Law

JUDITH E TUCKER

Cambridge University Press, Cambridge, 2008, xii + 255 pp (paperback £18.99)

ISBN: 978-0-521-53747-6

Judith Tucker's analysis of the treatment of women in Islamic law begins with what have become all-too-familiar issues: the proposed stoning to death of a woman who had given birth to an illegitimate child and disputes over the proper attire of Muslim women. Yet her admirably balanced account of the development of Islamic law eschews such sensationalism; instead, she provides a careful and nuanced description of the way in which topics such as marriage, divorce, legal capacity and social space have been understood in different Islamic traditions at different points in history.

Indeed, the idea of difference is core to this work: the differences between Christian and Islamic approaches to women and their role within the family; the overt and explicitly justified difference in treatment of men and women; and the way in which the many and varied Islamic traditions have provided different answers to a range of topics at different times.

The first of these differences evokes relatively little explicit discussion, perhaps for fear of positioning Islamic legal systems as 'the other', or perhaps because it has become more difficult to speak of 'Christian' legal systems. It was, after all, as long ago as 1948 that the House of Lords rejected the Prayer Book as a source of guidance in *Baxter v Baxter* [1948] AC 274. By contrast, many of the legal systems under consideration here underwent a deliberate process of Islamisation in the late twentieth century, laying greater emphasis on issues such as seclusion and veiling and reintroducing harsh punishments for various types of sexual misbehaviour. However, occasional contrasts are drawn, and not always to the credit of Christian legal systems. Tucker points out, for example, that the laws of Renaissance Florence discriminated against women as property-holders to a greater extent than did Islamic law, and that 'unlike in much of the western legal tradition, the marital status of a woman had no impact on her legal competence' (p 136); her account of eighteenth-century divorce (pp 109–11) also makes it clear that Muslim women enjoyed greater rights to divorce than were available in England at that time. Such examples are, however, rare: while the *advantages* enjoyed by women in the western legal tradition are not spelt out, one suspects that the list would be rather longer.

The second difference lies at the heart of the book. Tucker describes how Islamic traditions have specified distinct roles for men and women inside marriage (and

different modes of exit from marriage). But in evaluating the role of women within the family, she goes beyond those topics normally categorized as 'family law', noting perspicaciously that '[t]he ability of women and men to participate in the economic activities of their societies – to earn, to inherit, to save, and to dispose of property in the ways they wish – has a direct bearing on their position in the family and in the larger society' (p 134). The laws of inheritance may have accorded women lesser rights than men, but did at least guarantee that they received some share of the estate (p 139). She also shows how challenges to such discrimination as exists are now being mounted both by reference to international human rights documents such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and, perhaps more significantly, by contesting traditional interpretations of Qur'anic sources.

This leads on to the third area of difference, that of plural legal sources and traditions *within* Islamic law. Tucker provides a helpful overview of the different sources and notes how different legal traditions have resulted in a 'striking absence of uniformity in the reformed codes' (p 750); indeed, in relation to divorce she acknowledges that she herself was 'struck by the great diversity of legal opinion over time and across space about how divorce should take place.' (p 130).

And it is this diversity that Tucker sees as providing a cause for optimism about the future development of Islamic law. She suggests that the 'very nature of the law – its textual scope, its decentralized authority, its responsiveness to community issues, its sense of higher purpose – has insured a legacy of diversity and adaptability with the potential to insert moral principles into a modern legal system in a way that is neither discriminatory nor male-normed' (p 223). And whatever its future, those who read her book will certainly have a better understanding of its past.

REBECCA PROBERT

University of Warwick

doi:10.1017/S0956618X10000918

Law and Religion in Historical and Theoretical Context

EDITED BY PETER CANE, CAROLYN EVANS AND ZOË ROBINSON

Cambridge University Press, Cambridge, 2008, 336 pp (hardback £57.00) ISBN: 978-0-52142590-2

In recent years the scholarship of law and religion has become increasingly vibrant and diverse. This new collection of essays, based on presentations at a conference on Law, Religion and Social Change held at the Australian National University in 2007, examines the differing nature and ways in which